

HAROLD P. GEWERTER, ESQ.

E filed: September 20, 2010

Nevada Bar No. 499

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Attorney for Defendant

VISION AIRLINES, INC.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

GERALD HESTER, on behalf of himself and
all others similarly situated,

Plaintiff,

vs.

VISION AIRLINES, INC.,

Defendant.

CASE NO: 2:09-CV-00117-RLH-RJJ

**DEFENDANT VISION AIRLINES,
INC.'S OPPOSITION TO PLAINTIFF'S
MOTION IN LIMINE TO STRIKE AND
EXCLUDE CERTAIN OF
DEFENDANT'S EVIDENCE AND
ARGUMENTS AND INCORPORATED
MEMORANDUM OF LAW**

VISION AIRLINES, INC. ("VISION"), by and through its attorney of record, HAROLD P. GEWERTER, ESQ., of the law firm of HAROLD P. GEWERTER, ESQ., LTD., respectfully submits Defendant VISION'S Opposition to Plaintiff's Motion in Limine to Strike and Exclude Certain of Defendant's Evidence and Arguments and Incorporated Memorandum of Law.

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1 This Opposition shall consist of this Preamble, the following Points and Authorities and
2 the complete files and records of this action.

3 DATED this 20th day of September, 2010.

4 HAROLD P. GEWERTER, ESQ., LTD.

5 /s/ Harold P. Gewerter, Esq.
6 HAROLD P. GEWERTER, ESQ.
7 Nevada Bar No. 499
8 2705 Airport Drive
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10 Attorney for Defendant
11 VISION AIRLINES, INC.

12 **POINTS AND AUTHORITIES**

13 **I.**

14 **FACTS**

15 Defendant/Counterclaimant VISION has, since 2005, provided airline services to a
16 contractor or subcontractor of a federal government entity. Plaintiff/Counterdefendant HESTER
17 is a former VISION pilot who claims that Defendant/Counterclaimant VISION failed to give him
18 specific sums of “hazard pay” allegedly required for flights into and out of Baghdad, Iraq and
19 Kabul, Afghanistan. Plaintiff/Counterdefendant HESTER’S services ended with
20 Defendant/Counterclaimant VISION because of federal age restrictions on pilots, and further,
21 Plaintiff/Counterdefendant HESTER fell asleep while on duty.

22 **ARGUMENT**

23 Federal Rules of Evidence 401 and 402 provide that relevant evidence—evidence tending
24 to show the existence of a fact “that is of consequence to the determination of the action more
25 probable or less probable”- may be admitted. Based on these Rules, evidence and examination
26 regarding the events of September 13, 2007 should be allowed.

27 It is hard to understand Plaintiff’s argument that the lead Plaintiff, GERALD HESTER,
28 falling asleep while flying, is not related to his job performance and thus his pay, which is the
central subject of this action. This action is for alleged back pay, and ones performance on the
job is without question relevant to the pay due. Plaintiffs have fought tooth and nail to keep

GERALD HESTER as lead plaintiff in order to avoid the necessity for one of the actual leaders pushing this action to emerge from the shadows and take the lead Plaintiff spot. As such, they are in no position to say that Plaintiff HESTER'S job performance isn't relevant to pay. They chose this lead Plaintiff and as a result they get him for both the good and the bad. It is disingenuous for Plaintiffs to claim that they choose Plaintiff HESTER as lead Plaintiff because he is indicative of the class as a whole, but then to argue that lead Plaintiff HESTER, who is requesting alleged back pay, cannot be questioned about what he did to earn such pay.

Plaintiffs argue that since they are only requesting alleged "hazard pay" job performance is irrelevant but this is a red herring argument. Defendant VISION'S employees were paid one check without any breakdown for separate pay items. There simply is no "hazard pay" line on the paycheck. Therefore, a reduction in pay, suspension, etc. would all affect the amount of pay regardless of Plaintiff's attempts to create separate categories.

Therefore, based on these Rules, evidence and examination regarding the events of September 13, 2007 when lead Plaintiff HESTER fell asleep while flying should be allowed.

III.

CONCLUSION

For the foregoing reasons, Defendant VISION respectfully requests this Court to Deny in its entirety Plaintiff HESTER'S Motion in Limine.

DATED this 20th day of September, 2010.

HAROLD P. GEWERTER, ESQ., LTD.

/s/ Harold P. Gewerter, Esq.
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